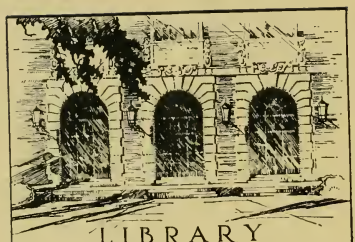

REVIEW

OF A TREATISE ENTITLED

THE SOUTH AFRICAN CHURCH QUESTION:

BEING

THE GRAHAMSTOWN JUDGMENT

EDITED, WITH AN

INTRODUCTION

BY

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REVIEW.

Mr. C. J. Cooper, Barrister-at-Law, of the Diocesan College, Rondebosch, has published an edition of the "Grahamstown Judgment," very correctly printed in good clear type and on good paper. He has provided for those who take any interest in the subject, a convenient hand-book for study or for reference, but we suppose that his chief object in the publication is to draw attention to the introduction, in which his own views on the South African Church question are set forth.

We thank Mr. Cooper for some useful references to legal documents, and for his kindly appreciation of the motives of those who take a view most contrary to his own upon the whole question. He does not charge them as some have done with disloyalty and dishonesty—he thinks their belief thoroughly ill-founded, and asks them "to re-consider their position and to take a calm view of all the bearings of the existing great crisis."

Mr. Cooper contributes not a little towards enabling us to take a calm view of all the bearings of the matter by stating plainly the conclusions to which his own views lead. To those who think that some small concessions, or alterations of language, such for instance as a change in the official title of the Church of the Province, would be sufficient to conciliate the party in whose interest he speaks, his conclusions may be startling; but they do not seem strange to those who have long seen the logical consequences of the proposals and arguments advanced, sometimes in moderate, sometimes in violent language, by the chief leaders of the party. His demands are,

1. The complete abrogation of the existing Constitution of the Province.

2. The dismemberment of the Province.

3. The dealing with the whole position of the South African Church *de novo*.

If the Church of the Province will thus perform "The Happy Dispatch" without delay, he and his friends will be satisfied, but not otherwise. Galgacus said of the Roman invaders of Great Britain, "Ubi solitudinem faciunt pacem

appellant." (Where they make a waste they call it peace). We, like the Britons of old, feeling this mode of peace-making to be both unnecessary and cruel, naturally object to being made victims to it; still we will take as calm a view as possible of these proposals to bring about the utter destruction of a system to which the Church in South Africa, as we believe, owes much of its energy and vitality.

1. We do not think that Mr. Cooper's facts and arguments justify his conclusions. To reconcile us to "the abrogation of the existing Constitution," he tells us that "to form such a Constitution was *ultra vires*." Barristers are supposed to know more about law than Clergy—and if all authorities learned in the law agreed with Mr. Cooper, there would be some reason for yielding to his *dictum*. But they do not. We remember, though Mr. Cooper does not, that in framing this constitution the advice of some of the most eminent lawyers in England was taken and followed. The Canons were very much the same as those adopted in Canada, New Zealand, &c. "The Constitution Deed which contains all the important points was forwarded to R. Palmer [now Lord Selborne] for his revision. He highly approved of it, and made several important alterations. Judge Connor and the Solicitor-General here both helped to perfect it."* Mr. Cooper indirectly accuses these eminent lawyers of advising the Church of this Province to act *ultra vires* in forming its Constitution.

But, in point of fact, did the Church here act *ultra vires*? When a company or corporation does act *ultra vires—i.e*, beyond the powers conferred upon it or inherent in it, the act is invalid, and it is set aside directly it is examined in a Court of Law; as for instance, when a person contracts to give away the rights of other people. Now the Constitution of the Church of the Province of South Africa has been examined before a Court of Law. It is conceivable that that Court might have said, (indeed if Mr. Cooper's *dictum* had been true, it must have said) "In forming this Constitution the South African Church has acted *ultra vires*, it has professed to do what it had no power to do." The Court did say, "It was competent for the Church of South Africa to establish for itself any system of law which it thought fit." Mr. Cooper's *dictum* is completely refuted by the Judgment he has edited.

* See Life of Robert Gray, 1876, Vol. II. p. 489.

2. To reconcile us to the dismemberment of the Province, Mr. Cooper calls the Province "simply a monstrosity." He thinks that the Metropolitan of Capetown, if he is to have a Suffragan at all, should have only the Bishop of Grahamstown. He should remember that though hard words break no bones, they have no power to sooth feelings, especially when they are unjustly applied. In this case his reproach falls on the legal advisers of the Crown, and the authorities of the Church of England rather than on the Church of the Province. The legal advisers of the Crown made a mistake without doubt, when they professed to confer on the Bishop of Capetown the *powers* of a Metropolitan as well as the title, for it was afterwards proved that the Crown had no power to erect a Diocesan or Metropolitan See in such a Colony as this.* But they have not yet found out that they were creating "a monstrosity" when they professed to subject the Dioceses of Natal and St. Helena to the Metropolitan of Capetown. Mr. Cooper is quite mistaken in thinking that "unless countries are politically confederated," they cannot be united in one Ecclesiastical province. As a general rule, the ancient Church followed the political divisions of the Roman Empire in arranging her Provinces and Dioceses: but she did not tie herself to follow that model; she arranged them as she thought most conducive to her own spiritual government and discipline. In some cases the union of Dioceses in a Province depended rather upon geographical than upon political considerations. The first Lambeth Conference strongly recommended the association of Dioceses into Provinces, "in accordance with the ancient laws and usages of the Christian Church," and thought it expedient that these ecclesiastical divisions should follow as far as possible the civil divisions of countries. The second Lambeth Conference in repeating the recommendation, observed that some Dioceses were "geographically incapable of being so combined." It referred however with satisfaction to the "Province of South Africa with eight Dioceses," evidently not being aware of any "monstrosity" in the formation of this Province. We consider it a special honour

* It was resolved at a meeting of English Bishops in 1853 that Metropolitans should be at once appointed over the Churches of Canada, New Zealand, and South Africa; and the concurrence and joint action of the Crown was sought and obtained. The Crown was willing to give the force of law, as far as it could, to the decision of the Church.

and privilege of this Province that it forms a link between members of the English Church of different races living under different governments, and without interfering with politics cherishes a friendly feeling and a sense of unity, a sympathy in common action for common objects, between many of the leading minds of each community. It has solved in its own sphere that problem of South African Confederation for the solution of which politicians have yet to wait many years in their department of life. Yet Mr. Cooper evinces a strong antipathy against this special feature of our Province; and the reason is not far to seek. There is still in his mind a lingering belief in the right of the supreme temporal power to prescribe to its own subjects what they shall believe, or at least what faith they shall profess, but not to impose that profession on foreign nations. He sees clearly that it is absurd to expect members of a voluntary religious body working outside the Queen's dominions to look up to an English Lay Court for final decisions in faith and doctrine, when that Court has not any power to touch them, or the disposal of their property—and has not the slightest pretence to be supreme over them. He wishes to establish the supremacy of the Privy Council over one part of the Province, and feels that it is impossible to maintain it over the other part; therefore he wishes to dismember the Province. If the Bishop of Bloemfontein, for instance, has to apply to a Civil Court to enforce a decision of his Diocesan Court, within the boundaries of the Free State, no appeal can be carried to any English Court upon the matter.

The Courts of the Free State would intervene to settle questions as to the possession or due administration of property in such cases, and their decision would be final between the parties. They might possibly ground their decision upon their own interpretation of the doctrinal formularies of the Church. The Church's duty would be to submit to their decision as regards property; but would the Church be in the slightest degree compromised by their ruling with respect to questions of faith and doctrine? Would it be bound for the future to interpret its standards, as the law of the land had interpreted them? The Proviso prevents any mistake on this head—without the Proviso difficulties might be felt.

3. Mr. Cooper proposes to "deal with the position of the South African Church *de novo*" as the only remedy for "the deep

unrest and sorrowful misgivings" of dissatisfied Churchmen, who "through a feeling of endangered Catholic unity and of fidelity to the cause of liberal comprehensiveness," object to the present Constitution of the Church of the Province. This proposal is certainly radical enough, but it is very indefinite. We have a right to ask, when you have destroyed the present system, what do you propose to set up instead of it? Arguments have been brought forward to show that any attempt at self-government by the Church of the Province must endanger that legal connection with the Church of England, which is the one treasure to be retained at all hazards. Some seem to think that the Government of this branch of the Church would be safer in the hands of the Archbishop of Canterbury, or of his Secretary, than in those of the Provincial Synod. "A Synod with coercive authority is a standing menace to the health and very life of the Church" says Mr. Cooper: he could endure "a Pan-South-African Synod which should advise, and not govern." He objects to a Synod, as far as we can understand him, which has power to make rules really binding on those "who expressely or by implication have assented to them," for the "coercive authority" of the South African Provincial Synod really extends to such persons, and to such only. According to Mr. Cooper's views, so long as the Canons and Constitution of the Province could with any plausibility be represented as a mere draft that bound nobody, they did no harm; but when the highest Court of Appeal acknowledges their binding force, they must be got rid of at once, and we are invited to deal with the position *de novo*. We respectfully decline the invitation. "The liberties of the individual components of the great congregation of faithful men which forms the Church are quite as sacred as those of the Church corporately considered." "It is all important to be on the watch against a voluntary surrender of freedom." If Mr. Cooper means here the liberty of the individual to do wrong with impunity, to teach false doctrine and to live an immoral life without being called to account, we entirely differ from him. He speaks with respect of the Catholic and Apostolic principles of the Church of England. One of those principles is that "the right use of ecclesiastical discipline" is one of the three marks or notes by which the true Church of Christ is known.* "It appertaineth to the discipline of the Church that enquiry be

* Homily for Whitsunday.

made of evil Ministers, and that they be accused by those that have knowledge of their offences; and finally being found guilty by just judgment be deposed."* Mr. Cooper's caution against "a voluntary surrender of freedom" combined with the demand made elsewhere, "That no declarations of subscription or contracts shall be required of the Clergy but such as may by law be required or enforced in England," would render all discipline over the Clergy impossible; and it appears that Mr. Cooper thinks it better to tolerate any false doctrine or immorality in a Minister than "to produce an unhappy appearance of a conflict between the spiritual and the temporal elements in the Church's Constitution, and to obscure in numerous minds their former appreciation of the merits of that alliance between the Church and State, which had so long and so very widely been believed to be the peculiar advantage of the Elizabethan Settlement of the Church's affairs." The very reason why subscriptions, and contracts, and "a voluntary surrender of freedom" so far as to promise obedience to the enactments of Synods, are necessary out here, is that in this Colony the State has renounced all alliance with the Church. The Law Courts have decided that the Crown is unable to give any jurisdiction to ecclesiastical authorities, and pointed out that the only way in which members of the Church of England in this Colony can enforce any discipline within their body is by means of contract. (See the quotation from the *Long* Judgment on p. 45 of Mr. Cooper's book). Mr. Cooper sets himself in direct opposition to the Privy Council when he decries the authority allowed by law to such bodies as the Provincial Synod.

The general principles on which the Church of this Province has acted are known and accepted throughout the Anglican Communion; we cannot regard the suggestion to deal with the position of the Church here *de novo* as an open question. To blot out the past is impossible, to attempt to do so is irrational, to make use of the lessons of history is a common duty, which the Church here has not neglected.

"A grave responsibility attaches to the Church body in general in view of the lamentable state of things at Natal."

Had the present Constitution of the Province been framed ten years earlier, the peculiar complications of the Natal case

* Articles of Religion, xxvi. Of the unworthiness of Ministers, &c.

would not have arisen; but on the other hand, without the peculiar experience gained in the Natal case the Constitution would hardly have contained the provisions and precautions which were thereby proved to be necessary.

The Metropolitan was ostensibly "authorized and directed" by the Crown to "take cognizance of any proceedings instituted" against any of his suffragans, to perform a duty naturally belonging to the office of Metropolitan. He did so, and his sentence was pronounced by the Privy Council to be "null and void in law," the Crown not having had the power to give the jurisdiction it professed to give.

When S. Paul gave sentence that the incestuous Corinthian should be cast out of the Church, Gallio might have pronounced the act "null and void in law," because there was no law or ordinance in the Roman Code to authorize such an act. Yet the act was really valid, and had its proper effect. The Church has authority which the State did not bestow, and by that higher authority the Metropolitan acted, and the living voice of the Church in the Anglican Communion approved of his action.* The temporal law maintained Dr. Colenso in the possession of his title and property, it did not pretend to command the Metropolitan to receive him back into communion. Still great confusion of thought ensued; many supposed that the declaration of the Privy Council that the Metropolitan's sentence was "null and void in law," was equivalent to a justification and legal sanction of all that Dr. Colenso had taught. The Provincial Constitution was not responsible for these complications, or for this confusion, for it was not yet in existence—but the existence of the Constitution is the best security against the recurrence of similar complications. It has provided a safeguard which the law will recognize, where the law itself had really provided none. Mr. Cooper has reminded us that certain eminent lawyers, Sir J. Coleridge, (now Lord Coleridge) Sir R. Palmer, (now Lord

*"This action of the African Church was approved by the Convocation of Canterbury; by the Convocation of York; by the General Convention of the Episcopal Church in the United States in 1865; by the Episcopal Synod of the Church in Scotland; by the Provincial Synod of the Church in Canada, in the year 1865; and finally the spiritual validity of the sentence of deposition was accepted by *fifty-six* Bishops on the occasion of the Lambeth Conference." Reports of Committees appointed by the Conference, viii. pp. 37, 38. 1867.

Selborne) and Dr. Deane were consulted in 1869 as to whether there was any means of bringing Dr. Colenso to trial for heresy. Their answer was, "We are of opinion that no means at present exist for trying before any tribunal competent to decide the question whether or no Dr. Colenso, the present Bishop of Natal, has advocated doctrinal opinions not in accordance with the doctrines held by the Church of England; and assuming the present Bishop of Natal to have been guilty of an ecclesiastical offence, no steps can be taken to bring him, as such Bishop, before any tribunal."* It is idle for men to profess that they "have no scruple whatever about entire submission to the discipline of the Church as the Law of England determines it at home," while they are striving to get rid of the only means by which such discipline can be enforced upon offenders.

"The law is not made for a righteous man, but for the lawless and disobedient." A law which can never be enforced is useless for practical government. The Constitution of the South African Church provides the means of removing an immoral or heretical Bishop or Minister from his charge, and some for this reason treat it as an enemy. If a Colonial Clergyman has been convicted in the Civil Courts of the Colony of lying, dishonesty, and open immorality, the Church of England cannot touch him, or remove him from his post—it has no machinery, either here or in England, that it can put in motion against him for offences committed here—it cannot bring him to trial, it can neither protect him if he is innocent, nor punish him if he is guilty. It is natural therefore for a man of bad character and immoral life to vilify the rules of the Provincial Synod, and to extol the laws of the Church of England, from which he has nothing to fear. Good and worthy men may be led by their views of policy or expediency, by their sincere dread of innovations, by their love for old associations and watch-words, to hold the balance of judgment not quite evenly in weighing the faults and merits of a Colonial Church Constitution, but an immoral Minister has personal reasons for condemning a constitution that gives power to condemn him.

"The lamentable state of things at Natal, the affliction and scandal," are due rather to the assaults made there upon the faith of the Church, than to the defence of the truth—unless indeed, as Mr. Cooper seems to imply, it is a worse offence to disturb men's

* *Forsyth*, Cases and Opinions on Constitutional Law, p. 59.

faith "in the merits of the alliance between the Church and State" than their faith in the fundamental doctrines of the Christian religion.

It is plain that the Bishop under present circumstances, cannot, for any cause whatever, remove an offending Minister from an ordinance-governed Church, though we think Mr. Cooper is mistaken when he says that the law of the Colony protects such Clergy from the jurisdiction of the Bishops and Synods of the Province. They may contract to be bound by the rules of the Province and as far as personal contracts and equities are concerned, be liable to the consensual jurisdiction of the Diocesan Courts. But the fabric of the Church is under the control of the Vestry, who are regarded as the active "trustees and managers" of that property. There is no *law* that we can see to prevent the Vestry from allowing an immoral Minister from officiating in their Church, or from dismissing any Minister at their pleasure, except that as the Officiating Minister is *ex officio* Chairman of the Vestry, he might refuse to put to the vote the motion "That the Minister be now dismissed." This unhappy condition of affairs would not be changed, if the Church of the Province took steps to restore the legal connection with the Church of England, and even succeeded in getting "the connection" legally recognized. A remedy can be provided only by the Colonial Legislature—and it certainly ought not to be difficult for those congregations that recognize the greatness of the evil to obtain legislation for its removal. One effect, and the only certain effect that has yet been shewn, of the repeal of the Third Proviso would be to subject the Church of the Province by its own act to the interpretations of the Privy Council in matters of faith and doctrine. Mr. Cooper agrees with us and with the Bishop of Capetown that this would be the effect of such repeal. We cannot therefore accept Mr. Cooper's assurance that "there could not be any surrender of principle on the part of" the supporters of the Proviso, "if they should consent for the sake of peace and harmony to" this "change in the existing Constitution." The religious principle involved was well put by one of the speakers in the late Diocesan Synod at Capetown. "The Church has a commission from Christ to maintain and transmit His religion. The State has no such commission. The Church which Christ founded was a Church governed by Apostles and Bishops not a Church governed by lawyers." The

legal principle is this, (and it is approved by very high legal authority) "The judicature of a Free Church must be free, and not bound by the decisions of any courts, which are not courts of that Church, concerning merely spiritual questions of faith and discipline."

This notice has run to greater length than we intended, but before concluding we might point out one or two causes of perplexity, and of mistakes in practice and in argument on this subject.

1. The principles of law that regulate the relations of persons to each other are not identical with those that govern the use and possession of property. Neglect of this difference leads to false arguments from analogy. For instance, apart from any special contract, the law assumes that a Colonial Clergyman stands in the same relation to his Bishop, as a Clergyman in England to his Bishop; therefore, a Colonial Bishop has the same rights in every Parish Church in his Diocese as an English Bishop has in English Parish Churches. This is not a sound argument; for Colonial Church Ordinances have given all control of the fabric to the Vestry and none to the Bishop, whose office they utterly ignore.

2. The Association or Corporation styled the Church of the Province of South Africa is not legally connected with the Church of England; but the individual members of the Association are legally members of the Church of England, and some of them have civil rights in the Colony as such. Similarly the Society for the Promotion of Christian Knowledge was not legally connected with the Church of England, though by its old rules none but members of the United Church of England and Ireland could become members of it. It is not always easy to distinguish individual and corporate rights.

3. There is a difference between the principles of the Church of England and the laws of the Church of England. In a new state of circumstances it is more important to reproduce principles than laws. New laws are often required to embody old principles. For a summary of the principles of the Church of England relating to Colonial and Missionary Churches, we would earnestly commend to our readers the study of the Reports of the Lambeth Conferences. Those Reports do not lay down laws which we are bound to follow—but they are entitled to great respect and moral weight, considering that they proceed

from the united counsel and judgment of the whole Anglican Episcopate. If Mr. Cooper had been better acquainted with them, we think he would have passed a more favourable, or at least a more lenient judgment on the South African Church than he has done. His arrival from England has been so recent that he has not had time to form from personal experience any idea of the necessities of Church government in a country where there is no alliance between Church und State—he has not yet shaken himself free from the notions of State control over the Church which were natural to an average Englishman in England; his ready sympathies have been attracted in one direction since his arrival; and so he condemns as "a line of action essentially innovating" that course of procedure which through a varied experience of many years has approved itself to a large majority of thoughtful Churchmen throughout the Province, and is in harmony with the wider judgment of the Church expressed at Lambeth.